IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

Crl.MC.No. 2325 of 2005(A)

[CRIME NO.359 OF 2004 OF KOIPURAM POLICE STATION, PATHANAMTHITTA]

PETITIONER: (ACCUSED NO.1)

JESSY THOMAS, W/O.DIDHI THOMAS,
KOMATTU HOUSE, THOTTAPPUZHASSERY MURI,
THOTTAPPUZHASSERY VILLAGE.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KOIPURAM POLICE STATION, PATHANAMTHITTA.

3. K.R.VIJAYANANDAN NAIR,
THOMPIL MATTAK VRINDAVANAM, THOTTAPPUZHASSERY MURI
THOTTAPPUZHASSERY VILLAGE.

BY ADV. SRI.MVS.NAMBOOTHIRY
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.2325 OF 2005

Dated this the 21st day of December, 2006.

ORDER

The petitioner, a woman is the 1st accused in a prosecution, inter alia, under Section 324 & 326 read with 34 I.P.C. Altogether there are 3 accused persons. The crux of the allegations is that the accused persons in furtherance of their common intention caused injuries, simple and grievous to the defacto complainant. Cognizance was taken on the basis of a final report filed by the police after investigation. The petitioner had received summons. She has appeared before the learned Magistrate. The court has not framed charges yet. The petitioner has rushed to this Court with a prayer that the powers under Section 482 Cr.P.C may be invoked and the proceedings against her may be quashed.

2. What are the reasons ? It is contented that there is a civil dispute between the parties and the allegations are raised with mala fide and oblique motives. The allegations are totally false. The very allegation is that the accused persons attempted to obstruct a path way by constructing a compound wall and when the defacto complainant and his wife raised objections,

they were assaulted. At this stage of the proceedings and with the available inputs, it would impossible for the Court exercising powers under Section 482 Cr.P.C to resolve the disputed complicated questions of facts. The contention that the allegations are false cannot in the facts and circumstances of the case, lead to an order under Section 482 Cr.P.C quashing the proceedings.

3. Alternatively it is contended that there is no worthwhile allegation at all against the petitioner. I have been taken through the F.I statement as also the final report submitted by the police. I shall carefully avoid any detailed discussions of the disputed questions, but suffice it to say that having gone through the entire materials, I find no substance in the contention that no allegations have been raised against the petitioner/1st accused. Going by the averments in the F.I statement or the allegations raised in the final report, this contention cannot legally stand. I do not in these circumstances, find any reason to prematurely terminate the proceedings against petitioner by invoking the powers under Section 482 Cr.P.C. The challenge raised must in these circumstances fail.

4. The learned counsel for the petitioner submits that there was an order of stay against continuation of the proceedings all along. But there was no extension of stay after 23.08.2006. In between, the learned Magistrate has issued a non bailable warrant of arrest against the petitioner. Appropriate directions may be issued to safe guard the interest of the petitioner, it is submitted.

5. It is for the petitioner to appear before the learned magistrate and explain to the learned Magistrate the circumstances under which she happened to be absent on that date of posting after 23.08.2006. I have no reason to assume that the learned Magistrate would not consider the application for bail reasonably, on merits and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

6. In the result, this Crl.M.C is dismissed. But with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

7. The learned counsel for the petitioner submits that charges as alleged by the police are not liable to be framed. At any rate, the allegation under Section 326 I.P.C is not sustainable, contends the learned counsel for the petitioner. I need only mention that the petitioner can raise this contention before the learned Magistrate at the appropriate stage to claim discharge/acquittal.

R.BASANT
JUDGE

rtr/